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EXAMINER

DUBASKY, GIGIL

ART UNIT	PAPER NUMBER
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2421

NOTIFICATION DATE	DELIVERY MODE
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10/29/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip.department.us@nxp.com

Office Action Summary

Application No.

10/562,535

Applicant(s)

GENTRIC ET AL.

Examiner

GIGI L. DUBASKY

Art Unit

2421

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings of Figures 1 and 6-7 are objected to under 37 CFR 1.83(a) because they fail to show detailed descriptions of blocks in diagrams as described in the specification. The boxes or blocks in Figures 1 and 6-7 should be labeled in detail to make them easy to understand. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 10 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend on another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim 10 has not been further treated on the merits.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 10 claims “a computer program comprising instructions for implementing... is executed by a processor.” However, the claim does not define a *computer program* to be a functional descriptive material encoded on a memory/disk (see Applicants’ specification) and is thus non-statutory for that reason (i.e., “When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of

technology permits the function of the descriptive material to be realized"). Moreover, "computer program" is neither a process ("action"), nor machine, nor manufacture, nor composition of matter (i.e., tangible "thing") and therefore non-statutory.

Because the full scope of the claim as properly read in light of the disclosure encompasses non-statutory subject matter, the claim as a whole is non-statutory and appears to be one type of claim that is considered nonstatutory, under the present USPTO Interim Guidelines, 1300 Official Gazette Patent and Trademark Office 142 (Nov. 22, 2005).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 5 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Leaning et al (WO 02/49343 A1) of the record.

Regarding claim 1, Leaning discloses a server ("server 1" in Figure 1) having access to at least one set of files (Si) generated by slicing an encoded multimedia content in at least one set of slicing positions ({Ti,1, ..., Ti,K}) forming slices that can be decoded independently one from the other, and by enclosing each slice in a file (Fij) thereby generating at least one set of files (page 3 lines 5-22), said server comprising:

means for receiving an initial request directed to a multimedia content from a client device (page 2 lines 16-17),

means for sending a document to said client device upon reception of said initial request, said document causing said client device to repetitively send a fetching request designating said multimedia content (page 6 lines 5-8 for in the case of sub-file given a random name not a simple fixed length sequence of numbers starting with zero, the terminal's player program is sent the name of the first sub-file and an algorithm to calculate succeeding ones or is sent a list of the filenames; and see the summaries of process between the terminal and the server in the flowchart of pages 9-10 for the terminal repeatedly sends a fetching request for subsequent sub-files of content (going to step J1 in looping) after receiving the instruction from the server. In other words, Leaning clearly discloses that in the case of randomly named sub-files, after receiving the request message from the terminal, the server sends to the terminal a response/a document including the first sub-file name and an algorithm of calculation of succeeding ones or a list of filenames which instructs the terminal repeatedly sends a fetching request for the rest of subsequent sub-files of content),

means for selecting at least one file amongst said set(s) of files, upon reception of said fetching requests from said client device (see the flowchart in page 10 for the server enables to check whether the requested sub-file exists or not, in case of sub-file's existence selects requested sub-file among a set of files and sends it in response to fetching requests from the terminal), and

means for downloading the selected file(s) to said client device (page 2 lines 16-18 and

page 5 lines 13-14 for transmitting required sub-file to the terminal in response to request message).

Regarding claim 5, all limitations of claim 5 are analyzed corresponding to the functionalities of the server as discussed in the rejection of claim 1. So, claim 5 is rejected under the same rationale as claim 1.

Regarding claim 9, Leaning discloses a network system (see Figure 1) comprising at least:

- a source for acquiring a multimedia content (page 1 lines 13-14 for “server 1” stores a set of files representing successive portions of audio or video material. It means that the server includes a source for acquiring content),
- an encoder encoding said multimedia content (page 1 lines 20-24 for transmitting digitally coded/encoded audio or video material from the first station/server. It means that server must include an encoder),
- a slicer for slicing said encoded multimedia content in at least one set of slicing positions forming at least one set of slices that can be decoded independently one from the other, and for enclosing each slice in a file thereby generating at least one set of files (page 1 lines 20-24 for partitioning the material into a plurality of discrete files. It means that server couples to a slicer),
- a distribution network (“internet 2”),
- an access provider for providing a client device with an access to said distribution

network (page 2 lines 5-13 for the "internet 2" also performs function as an access provider to provide "terminal 3" with an access to telecommunication network via "communication interface 35" in Figure 2), and
- a server ("server 1").

Regarding claim 10, Leaning discloses a computer program executed by a processor comprising instruction for implementing the method (page 2 lines 5-32 for server must be implemented by software and hardware to perform functions).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 2-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leaning et al (WO 02/49343 A1) of the record in view of Lai (US 2003/0236864).

Regarding claim 2, Leaning discloses the server as discussed in the rejection of claim 1. Leaning further discloses the document contains a resource identifier designating said multimedia content and specific to said client device (see the flowchart in page 9 for the server sends a response which includes a resource identifier of requested content (http://server1.com/mp3_bwv565/link.htm) to requested terminal

upon receiving a request message), and causes said client device to repetitively send fetching requests containing said resource identifier (see the flowchart in page 10 for the terminal repeatedly sends a fetching request for subsequent sub-files of content (going to step J1 in looping) after receiving the instruction from the server), and said server comprises:

- means, activated upon reception of a first fetching request, for selecting a first file to be downloaded amongst said set(s) of files (page 6 lines 5-8 for in the case of sub-file given a random name not a simple fixed length sequence of numbers starting with zero, the terminal's player program is sent the name of the first sub-file and an algorithm to calculate succeeding ones or is sent a list of the filenames from the server after sending the initiated request message), and
- means, activated upon reception of subsequent fetching requests, for checking in order to select the next file to be downloaded (see the flowchart in page 10 for the server enables to check whether the requested sub-file exists or not, in case of sub-file's existence selects requested sub-file among a set of files and sends it in response to fetching requests from the terminal).

Leaning does not explicitly disclose keeping a record of said resource identifier together with an indication of the selected file at the server and updating the record.

Lai discloses a file downloading system allowing user to download file resources provided from the website server which establishes the file downloading record by utilizing member number and file identification number from member database and file resource database respectively in a file downloading database of the website server

and divides the requested file into a plurality of packets which also are stored in file downloading record (¶ [0006]). This file downloading record is maintained and updated to keep track of what next packet to be transmitted in case of interruption or whether the file is successfully downloaded to the user (¶ [0007]-[0008] and ¶ [0022]).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Leaning's server with the capability of keeping the record of file downloading as taught by Lai, so to provide a time-effective downloading system which enables to continue downloading untransmitted part of the file due to interruption without re-downloading previously transmitted parts (taught by Lai; ¶ [0032]).

Regarding claim 3, Leaning in view of Lai discloses the server as discussed in the rejection of claim 2. The combined system further discloses the document comprises an instruction for the client device to send a subsequent fetching request before the end of the playback of the file that was downloaded in response to the previous fetching request (taught by Leaning; page 15 line 12 through page 16 line 5 for offering an option of having files pre-loaded).

Regarding claim 4, Leaning in view of Lai discloses the server as discussed in the rejection of claim 2. The combined system further discloses means for selecting a file to download based on a jump indication contained in said fetching request (taught by Leaning; page 11 line 12 through page 12 line 7).

Regarding claim 6, all limitations of claim 6 are analyzed corresponding to the functionalities of the server as discussed in the rejection of claim 2. So, claim 6 is rejected under the same rationale as claim 2.

Regarding claim 7, all limitations of claim 7 are analyzed corresponding to the functionalities of the server as discussed in the rejection of claim 3. So, claim 7 is rejected under the same rationale as claim 3.

Regarding claim 8, all limitations of claim 8 are analyzed corresponding to the functionalities of the server as discussed in the rejection of claim 4. So, claim 8 is rejected under the same rationale as claim 4.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GIGI L. DUBASKY whose telephone number is (571)270-5686. The examiner can normally be reached on Monday through Thursday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2421

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421

GD